

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11..08..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.2550 of 2018

&

W.M.P.No.3108 of 2018

and

Writ Petition No.20057 of 2018

&

W.M.P.Nos.23518 to 23520 of 2018

V.N.Kavitha

... Petitioner in both the Writ Petitions

-Versus-

The Commissioner,
Chengalpattu Municipality,
Kancheepuram District.

... Respondent in both Writ Petitions

Prayer in W.P.No.2550 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to respondents tender notification made in Na.Ka. No. 084/ 2018/A1 dated 11.01.2018 with respect to item No.2 for grant of licence to collect fee in daily market and quash the same and to direct the respondent to extend licence for the period of full three years from the date of handing over the possession of the shops with respect to collecting fee in the daily market.

Prayer in Writ Petition No.20057 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the respondents proceedings made in Na.Ka.No. 2610/ 2016/ A1 dated 11.7.2018 and to quash the same and to direct the respondent grant another two years period of licence/ lease to collect the fee in the daily market from July 2018 to 2020.

For Petitioner in both : Mr.M.Muthappan
Writ Petitions

For Respondent in both : Mr.P.Srinivas,
Writ Petitions Standing Counsel

COMMON ORDER

The former writ petition has been filed challenging the Tender Notification issued by the respondent Municipality in Na.Ka No.084/2018/A1 dated 11.01.2018 with respect to grant of licence to collect fee in daily market and for consequential orders and the latter writ petition has been filed challenging the proceedings of the respondent in Na.Ka.NO.2610/2016/A1 dated 11.07.2018 whereby the respondent made a demand for payment of arrears of licence fee and for a consequential direction to the respondent to grant licence for another two years to collect the fee in the daily market from July 2018 to 2020.

2. According to the petitioner, a licence was granted to the petitioner by the respondent Municipality for a period of three years from 2015-16 to 2017-18 for collection of fees in 31 shops with shutters and 108 open shops without shutters in the municipality veritable market situated at Bazaar Street/Mettu Street in Chengalpattu and also for collection of fee in 7 open shops situate at the entrance of the market at Gandhi Salai. The petitioner was the highest bidder for a sum of Rs.20,03,501/- and the auction was also confirmed in favour of the petitioner. Since the municipality did not identify and place him in physical control of 146 shops, the petitioner filed a suit in O.S.No.319 of 2015 before the learned District Munsif, Chengalpattu, for a decree for mandatory injunction directing the respondent municipality to identify the shops in the market and place him in control of all the shops to enable him to collect the daily rent from the vegetable vendors. He had also filed an application in I.A.No.1915 of 2015 along with the above said suit for interim mandatory injunction and obtained an order of interim mandatory injunction. Subsequently, the order of interim injunction granted in his favour was vacated. Challenging the same, he filed an appeal in C.M.A.No.4 of 2016 before the Additional Sub Judge, Chengalpattu and the same was allowed by order dated 29.04.2016 whereby the Municipality was directed to handover the physical possession of all 146 shops as set out in the auction notice. That order was also not complied with by the municipality. Hence, he filed another application in I.A.No.404 of 2016 for implementation of the order passed in C.M.A.No.4 of 2016 with the help of the police. Even thereafter, he was not able to get possession of the shops therefore, he filed a petition for contempt against the municipality and the Inspector of Police, Town Police Station, Chengalpattu, in I.A.No.69 of 2017 wherein the Commissioner of the respondent Municipality tendered unconditional apology.

3. Pending contempt application the municipality issued notice to all the shops owners to pay the daily rent to the

petitioner. Aggrieved over the same, the occupants of some of the shops filed writ petitions before this court in W.P.Nos.9551 to 9550, 9775 and 9777 of 2017 and obtained an order of status quo. In the mean time, when the contempt application came up for hearing, the order of status quo passed in W.P.No.9551 of 2017 etc. batch was produced and thereafter, there was no progress in the contempt petition. In the contempt proceedings, the Commissioner, respondent municipality undertook to deliver the possession of the shops to the petitioner and only thereafter, the possession was delivered to the petitioner. While so, the respondent municipality has now issued a notification inviting tenders for the grant of license to collect fee from Bazaar market including daily vegetable market for a period of three years from 2018-19 wherein also he emerged as successful bidder. Since he was the licensee for a period of three years from 2015-16 to 2017-18 and he was not permitted to collect fees for nearly 2 1/2 years after being parted with a huge sum of Rs.23,00,000/-, he issued a legal notice requesting the respondent drop all the auction proceedings. According to the petitioner, the legal notice issued by him did not evoke any response and hence he has filed a writ petition in W.P.No.2550 of 2018 challenging the latest tender notification. Pending such writ petition the respondent municipality issued a notice dated 13.04.2018 directing the petitioner to pay the 2nd and 3rd year licence fees viz., for the year 2016-2017 and 2017-18 for which the petitioner sent a reply. But, without considering the reply and the objections raised by the petitioner, the respondent municipality has issued a final notice demanding the arrears of lease fees. Challenging this notice, the petitioner has filed the other writ petition in W.P.No.20057 of 2018.

4. The respondent has filed his counter affidavit in W.P.No.2550 of 2018 contending that the petitioner paid licence fee for the first year only and as per the condition the licence fee will be enhanced for the subsequent years. The enhanced licence fee for the second year will be 5% over and above the first year licence fee and third year licence fee will be enhanced by 5% over and above the licence fee fixed for the second year. Whereas the petitioner has paid only the first year licence fee and he has not paid the second year and the third year licence fees. After the licence was granted to the petitioner, he had started collecting fees from the open market vendors. Thereafter, he had applied for renewal of licence for the period between 2016-17 and the renewal was also granted at the enhanced licence fees of Rs.21,03,676/-, but, the petitioner did not pay the amount. He has paid only Rs.2,00,000/-. When the respondent requested the petitioner to pay the amount, he had filed a vexation suit. Even after obtaining the order of mandatory injunction, the petitioner did not pay the licence fee for the second and third years and he had not even applied for renewal of licence for the third year viz., 2017-2018. For the

years 2016-17 and 2017-18, the petitioner has to pay a sum of Rs.41,12,536/-. But, the petitioner instead of paying the licence fees, has come up with these writ petition making all sort of allegations to avoid payment. Since the petitioner did not pay the licence fee and the licence period had already been expired on 31.03.2018, the respondent had issued a Tender/Auction Notice. The right of the petitioner to collect fees expired on 31.03.2017 itself and he had not even applied for the renewal of licence for the period 2017-2018. The petitioner continued to collect the daily rent up to 31.03.2018 on the strength of the interim order of the civil court. Now, the petitioner, in order to avoid payment of licence fee of Rs.41,12,536/-, has come up with these writ petitions on vexatious grounds.

5. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent and also perused the records carefully.

6. Admittedly, the petitioner was granted licence for a period of three years from 2015-16 to 2017-18 to collect daily rent from the vendors in the market. It is also the admitted case of the petitioner that he had paid licence fee for the first year alone and for the remaining years, he had not paid the licence fee, and for the third year he had not even applied for renewal of licence. The only grievance expressed by the petitioner is that after having granted the licence, the respondent Municipality did not handover the physical control of the shops covered under the tender notification to the petitioner. Therefore, according to the petitioner, he was not able to collect the daily rent from the vendors. The respondent disputed the allegations made by the petitioner. After the interim order granted by the civil court, whether the respondent Municipality had placed the petitioner in physical control of the shops, is a disputed question of fact which cannot be resolved in this writ petition.

7. However, it is not in dispute that after the expiry of the first year of lease period, as per the tender condition, the petitioner has to renew his licence by paying 5% increased licence fee over and above the first year licence fee and likewise, for the third year also the petitioner has to pay the licence fee at the increased rate over and above the second year licence fee. But, the petitioner did neither get his licence renewed for the third year nor paid licence fee for the second and third years. Hence, after the expiry of licence period on 31.03.2018, the petitioner cannot have any right to continue to collect the daily rent. The petitioner, therefore, cannot challenge the fresh tender/auction notice as the licence period covered under the earlier tender got expired on 31.03.2018 itself. Apart from that, the petitioner also cannot challenge

proceedings of the respondent Municipality terminating the licence granted to the petitioner or inviting tenders for the grant of license to collect daily rent in the market. If at all the petitioner desires to continue, he can always participate in the public auction which is being conducted by respondent Municipality. In the said circumstances, I find no merits in these writ petitions and the same deserve only to be dismissed.

8. In the result, the writ petitions are dismissed with the above observation. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Commissioner, Chengalpattu Municipality, Kancheepuram District.

+2cc to Mr.M.Muthappan, Advocate sr.no.55441, 55442

+1cc to Mr.P.Srinivas, Advocate sr.no.55602

Writ Petition
Nos.2550 & 20057 of 2018

sj(co)
nr 06/09/2018

सत्यमेव जयते

WEB COPY